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PACIFICORP, an Oregon Corporation

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KLAMATH RIVERKEEPER, a nonprofit
public benefit corporation; **HOWARD**
McCONNELL; **LEAF G. HILLMAN**;
ROBERT ATTEBERY; and
BLYTHE REIS;

Plaintiffs,

v.

PACIFICORP, INC., an Oregon
Corporation;

Defendant.

CASE NO.: C 07-06199 WHA

**DEFENDANT PACIFICORP'S REQUEST
FOR JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS DUPLICATIVE
SUIT**

Date: January 24, 2008

Time: 8:00 a.m.

Place: Courtroom 9, 19th Floor

Judge: Hon. William H. Alsup

1 Defendant PacifiCorp (“PacifiCorp”) respectfully requests that the Court take
 2 judicial notice, pursuant to Federal Rule of Evidence 201, of the following facts and documents:

- 3 1. (A) The fact that Howard McConnell, Leaf G. Hillman, Robert Attebery,
 4 Frankie Joe Myers, Terance J. Supahan, Michael T. Hudson, Blythe Reis
 5 and Klamath Riverkeeper, a project of the Klamath Forest Alliance,
 6 (collectively “*McConnell* Plaintiffs”), filed an complaint in the United
 7 States District Court for the Northern District of California captioned
 8 *McConnell v. PacifiCorp, Inc.*, No. C-07-02382 WHA (N.D. Cal.)
 9 (“*McConnell* Complaint” or “*McConnell* case”), a true and correct copy of
 10 which is attached hereto as Exhibit 1, and (B) the fact that *McConnell*
 11 Plaintiffs made the allegations set forth therein.
- 12 2. (A) The fact that *McConnell* Plaintiffs filed an Administrative Motion to
 13 Consider Whether Cases Should Be Related (“Related Case Motion”) in
 14 the *McConnell* case, *McConnell* Docket No. 60, a true and correct copy of
 15 which is attached hereto as Exhibit 2, and (B) that *McConnell* Plaintiffs
 16 made the statements set forth therein.
- 17 3. (A) The fact that *McConnell* Plaintiffs and PacifiCorp filed a Joint Case
 18 Management Statement in the *McConnell* case (“*McConnell* Joint CMC
 19 Statement”), *McConnell* Docket No. 44, a true and correct copy of which
 20 is attached hereto as Exhibit 3, and (B) that *McConnell* Plaintiffs made the
 21 statements marked “Plaintiffs’ Statement” therein.
- 22 4. (A) The *McConnell* August 16, 2007 Case Management Order and
 23 Reference to Magistrate Judge for Mediation / Settlement (“*McConnell*
 24 CMO”), *McConnell* Docket No. 48, a true and correct copy of which is
 25 attached hereto as Exhibit 4, and (B) the fact that the Court set the
 26 *McConnell* case management deadlines set forth therein.
- 27 5. The *McConnell* case Order Granting in Part and Denying in Part Motion to
 28 Dismiss or for Judgment on the Pleadings and Denying Motion to Stay

1 (“*McConnell* Order”), *McConnell* Docket No. 49, a true and correct copy
2 of which is attached hereto as Exhibit 5.

3 6. The fact that the *McConnell* Plaintiffs have not sought leave of court to
4 amend their *McConnell* Complaint in the *McConnell* case, as evidenced by
5 the lack of a motion to seek leave for such amendment on file in the
6 *McConnell* Docket, current as of December 20, 2007, a true and correct
7 copy of which is attached hereto as Exhibit 6.

8 7. The fact that the Court determined that the *McConnell* case and
9 *Riverkeeper* case, *Klamath Riverkeeper et al. v. PacifiCorp*, N.D. Cal.
10 Case No. CV-07-06199 WHA, are related, as set forth in the Court’s
11 Related Case Order, *McConnell* Docket No. 61, a true and correct copy of
12 which is attached hereto as Exhibit 7.

13 The above-listed documents and facts are relevant to the Court’s consideration of
14 PacifiCorp’s Motion to Dismiss Duplicative Suit, which is filed concurrently herewith.

15 The Court may take judicial notice of facts “generally known” or “capable of
16 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
17 questioned.” Fed. R. Evid. 201(b). Such notice is mandatory “if requested by a party and [the
18 Court is] supplied with the necessary information.” Fed. R. Evid. 201(d). The fact that
19 *McConnell* Plaintiffs filed the *McConnell* case with this Court and made certain allegations
20 therein; the fact that *McConnell* Plaintiffs filed a Related Case Motion in the *McConnell* case
21 with this Court and made certain statements therein; the fact that *McConnell* Plaintiffs and
22 PacifiCorp filed the *McConnell* Joint CMC Statement in the *McConnell* case and that *McConnell*
23 Plaintiffs made certain allegations therein; the fact that the Court issued the *McConnell* Order
24 and the *McConnell* CMO; the fact that the *McConnell* Plaintiffs have not sought leave to amend
25 their Complaint in the *McConnell* case; and the fact that the Court related the *McConnell* and
26 *Riverkeeper* cases are all properly subject to judicial notice because these facts and documents
27 are “capable of accurate and ready determination by resort to sources whose accuracy cannot
28 reasonably be questioned.” *See* Fed. R. Evid. 201(b).

1 It is appropriate for this Court to take judicial notice of these facts and documents
 2 because they are either ascertainable from or are true and correct copies of the records of this
 3 court in the *McConnell* case. *See Mullis v. United States Bankruptcy Court for the District of*
 4 *Nevada*, 828 F.2d 1385, 1388 (9th Cir. 1987) (stating that, on a motion to dismiss, court may
 5 take judicial notice of pleadings, orders and other papers on file in bankruptcy court); *MGIC*
 6 *Indemnity Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (providing that, on a motion to
 7 dismiss, courts may take judicial notice of matters of public record outside the pleadings,
 8 including motions and supporting memoranda filed in declaratory judgment suit in federal
 9 district court). PacifiCorp is not requesting that the Court take judicial notice of these documents
 10 for the truth of any assertions contained therein, but rather for the fact that they exist in this
 11 court's files, and that they say what they say.

12 PacifiCorp respectfully requests that the Court grant this Request for Judicial
 13 Notice in Support of PacifiCorp's Motion to Dismiss Duplicative Suit.

14 Dated: December 20, 2007

Respectfully submitted,

LATHAM & WATKINS

18 By : _____/s/
 19 Richard W. Raushenbush

Attorneys for Defendant PACIFICORP

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